

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-CR-~~8088~~-SEITZ

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH RUSSO AND
DOREEN RUSSO,

Defendants.

6309

CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JAN 11 2001
11-11-01
726

JOINT MOTION FOR PRODUCTION OF WIRETAP APPLICATIONS

Joseph Russo and Doreen Russo, through counsel, move the Court to Order the government to produce the wiretap applications listed below. These wiretap applications are relevant to an analysis of whether the government complied with the requirements of Title III when it made two wiretap applications in January and February of 2000.

Background

Joseph and Doreen Russo were named in the most recent superseding indictment. As new defendants to the case, this court set a motions deadline of November 19, 2001. One of the issues that is being researched is the admissibility of the transcripts and tape recordings of a 30 day wiretap entered by Judge Dimitrouleas on January 7, 2000 and the extension entered by Judge Dimitrouleas on February 11, 2000.

In support of those two applications, the government submitted the affidavits of FBI Special Agent Patrick Brodsky. Both of those affidavits have been provided to counsel during discovery. The affidavits make reference to prior wiretaps obtained by the

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government targeting several co-conspirators, including lead defendant John Mamone. The government has also provided during discovery the wiretap application entered November 16, 1998 and September 23, 1999.

On page 13 of Brodsky's January 13, 2000 affidavit, he makes reference to the following wiretaps:

- November 19, 1998 wiretap by Judge Ferguson targeting John Mamone and others over telephone number 954 295-6672.
- November 12, 1999 wiretap by Judge Ferguson targeting John Mamone, Israel Torres and others over telephone 561 350-5824 and 917 414-7111.
- December 28, 1999 wiretap extension by Judge Ferguson targeting John Mamone, Israel Torres and others over telephone numbers (561) 350-5824 and (917) 414-7111.

On pages 21-22 of Agent Brodsky's wiretap application affidavit of February 11, 2000, he makes reference to the following additional previous wiretaps:

- February 4, 2000 wiretap by Judge Ferguson authorizing the continued interception of John Mamone, Israel Torres and others over telephone numbers (561) 350-5824 and (917) 414-7111.

None of the applications or affidavits supporting them have been provided during the discovery process. AUSA Brian McCormick has advised undersigned that he does not intend to provide them to undersigned for preparation of motions.

Argument

Every application to intercept telephone conversations must include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or be too

dangerous.” 18 U.S.C. § 2518(1)(c). To satisfy this “necessity” requirement, the application must be supported by an affidavit that “show[s] why traditional investigative techniques were not sufficient *in this particular case*.” United States v. Kalustian, 529 F.2d 585 (9th Cir. 1976)

After a preliminary review of the applications / affidavits supplied during discovery, it appears that the Russos have a viable challenge to the wiretaps based on the lack of necessity. Prior to the January 7, 2000 wiretap application, the government had already developed a numerous confidential informants who had infiltrated the alleged organization. A number of wiretaps were already in place. In order to fully develop the factual basis for a motion to suppress, undersigned needs to review all of the wiretap applications related to the investigation. Those four additional wiretaps (not yet provided in discovery) undoubtedly reflect additional investigative techniques that were succeeding -- further cutting against the necessity for the Jan. 7 and Feb. 11, 2000 wiretaps.

Accordingly, the Russos request a court order directing the government to provide those materials to undersigned counsel.

Attorney Jayne Weintraub has advised that her client, Joseph Russo, joins in this motion. AUSA Brian McCormick advises that the government opposes the request.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Nov 1, 2001 a true and correct copy of the

foregoing was furnished by mail to:

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